

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

180-Day Exp. Date: January 24, 2009

November 14, 2008

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) KA-3475
Consolidation and Subdivision of Land

APPLICANT: Board of Water Supply
County of Kauai
c/o Ben Welborn
Landmark Consulting Services Inc.

LANDOWNER/TMK: Bank of Hawaii Kukuilono Park Trust Estate
Lot 12 of TMK: (4) 2-3-005:002 & (4) 2-3-006:002

County of Kauai
TMKs: (4) 2-3-005:006 & 007

LOCATION: Kalaheo, Koloa, Island of Kauai

SUBZONE: General

DESCRIPTION OF AREA/CURRENT USE:

The proposed project area lies within Kukuilono Park in the southern portion of Kauai and is noted as Lot 12 of TMK: (4) 2-3-005:002 and TMK: (4) 2-3-006:002. There are three parcels within the larger Lot 12 that lie within the General subzone of the Conservation District of which two parcels are involved with the subject request. Existing uses include: a park, golf course and the existing 1968 County circular water tank on the larger Lot 12 located directly to the northeast of parcel 006; a 1940 water tank and pipeline Right of Way (ROW) on parcel 006; and undeveloped land on parcel 007 (Exhibits 1, 2 & 3).

PROPOSED USE

The applicant is proposing to consolidate parcel 007 & 006 into the larger Lot 12 and subdivide the existing County tank site and additional land (\approx 0.873 acres) to create a new "Lot B" (Exhibit 4).

On May 24, 2007, the Kauai County Council passed resolution 2007-76 to abandon the 1940 tank site on parcel 006 and remnant parcel 007 and authorized the exchange with the McBryde Trust (Kukuioolono Park Trust Estate) for the 1968 Tank site on Lot 12 and additional lands (≈site 34, 000 ft²) for a future tank site (**Exhibit 5**).

The proposed consolidation and subdivision will benefit the efficiency and operations of the Kauai County-Department of Water. Lot B shall be an expanded tank site that will continue to service the Kalaheo, Lawai and Omao municipal water systems.

SUMMARY OF COMMENTS

The Office of Conservation and Coastal Lands referred this application to the following agencies for review and comment: the State-Department of Health; the Office of Hawaiian Affairs; the Office of Environmental Quality Control; the Department of Land and Natural Resources Divisions of: Conservation and Resource Enforcement, Historic Preservation and the Kauai District Land Office; and the County of Kauai - Department of Planning. In addition, the CDUA was also sent to the nearest public library, the Koloa and Lihue Public Library, to make this information readily available to those who may wish to review it.

Comments were received by the following agencies and summarized by Staff as follows:

THE STATE

DEPARTMENT OF HEALTH

We strongly recommend that your review all of the Standard Comments on our website. Any comments specifically applicable to this application should be adhered to.

Applicant's response

We believe that the proposed action, as summarized in the CDUA is in compliance with all of the State Department of Health's environmental and land-use guidelines.

OFFICE OF HAWAIIAN AFFAIRS

We note different TMKs are identified in the invitation to comment.

Should any existing structures such as the water tank on parcel 6 be moved, are there any remediation plans after the removal such as re-planting with native or indigenous species common to the area?

Applicant's response

Referencing to "Lot 12" rather than the associated TMK numbers was made in order to match the consolidation and resubdivision map prepared by the project engineer.

The proposal shall not involve any physical alteration of the land, nor does it entail the removal and/or destruction of any existing structures. All existing structures will remain.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Historic Preservation Division

Residential development/urbanization and previous grubbing/grading has altered the land. An accepted archaeological inventory survey (AIS) found no historic properties in the tank area.

In the event that historic resources, including human skeletal remains, are identified during routine construction activities, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Division needs to be contacted immediately at (808) 692-8015.

Applicant's response

We acknowledge the State Historic Preservation Division has determined that that no historic properties will be affected. The applicant understands as has been documented in the CDUA that in the event that historic resources, including human skeletal remains, are identified during routine construction activities all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Division shall be contacted immediately.

Kauai District Land Office

No comments

ANALYSIS

After reviewing the application, by correspondence dated July 29, 2008, the Department has found that:

1. The proposed use is an identified land use in the General subzone of the Conservation District, pursuant to §13-5-22, Hawaii Administrative Rules (HAR), P-11, SUBDIVISION OR CONSOLIDATION OF PROPERTY, D-1, "Subdivision of property into two or more legal lots of record which serves a public purpose and is consistent with the objectives of the subzone." Please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to §13-5-40 of the Hawaii Administrative Rules, a Public Hearing will not be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, Environmental Impact Statement Rules, Subchapter 8, §11-200-8(a)(1), the proposed use is exempt.

4. The subject area is outside of the designated Special Management Area (SMA).

Notice of this application, CDUA KA-3475 was published in the August 8, 2008 issue of the Environmental Notice.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in §13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed consolidation and subdivision will assist in the management and operations of the Kauai County-Department of Water to provide water services to the General Public.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban uses would be premature. The proposed public purpose consolidation and subdivision is an identified land use that does not infringe upon the existing open space.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Staff believes the proposed use is consistent with Chapter 205A, HRS.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The proposed action shall have no physical impact on the land.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

No buildings, structures or physical facilities are proposed within this application.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff is of the opinion that the natural beauty and open space characteristics of the Conservation District will be maintained and preserved, as the proposed use shall not alter the land.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed consolidation and subdivision will not create any additional density or intensity of land use within the Conservation District.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff is of the opinion that the proposed subdivision will not be materially detrimental to the public health, safety and welfare.

DISCUSSION

Staff notes, on May 24, 2007, the Kauai County Council passed resolution 2007-76 to abandon the 1940 tank site on parcel 006 and remnant parcel 007 and authorized the exchange with the McBryde Trust (Kukuiolono Park Trust Estate) for the 1968 Tank site on Lot 12 and additional lands ($\approx 34,000$ ft²) for future use.

The underlying purpose of this subdivision appears to be to increase efficiency in the management of the Kauai County Department of Water facilities and to plan for future water use for the public. This proposal is for consolidation and subdivision of land only. Future improvements shall require the filing of a CDUA and Environmental Assessment.

RECOMMENDATION

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE the County of Kauai-Board of Water's application for public purpose consolidation and subdivision of land located at Kalaheo, Koloa, on the island of Kauai involving TMKs: (4) 2-3-005:006 & 007 and Lot 12 of TMK: (4) 2-3-005:002 and (4) 2-3-006:002 subject to the following conditions:

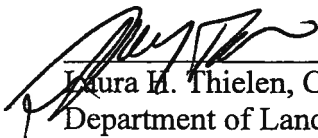
- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall provide to the Office of Conservation and Coastal Land a copy of the final subdivision map approved by the County of Kauai;

- 4) Upon final completion of the subdivision, the applicant shall provide documentation (e.g. book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument;
- 5) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 6) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 7) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 8) Other terms and conditions as may be prescribed by the Chairperson; and
- 9) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

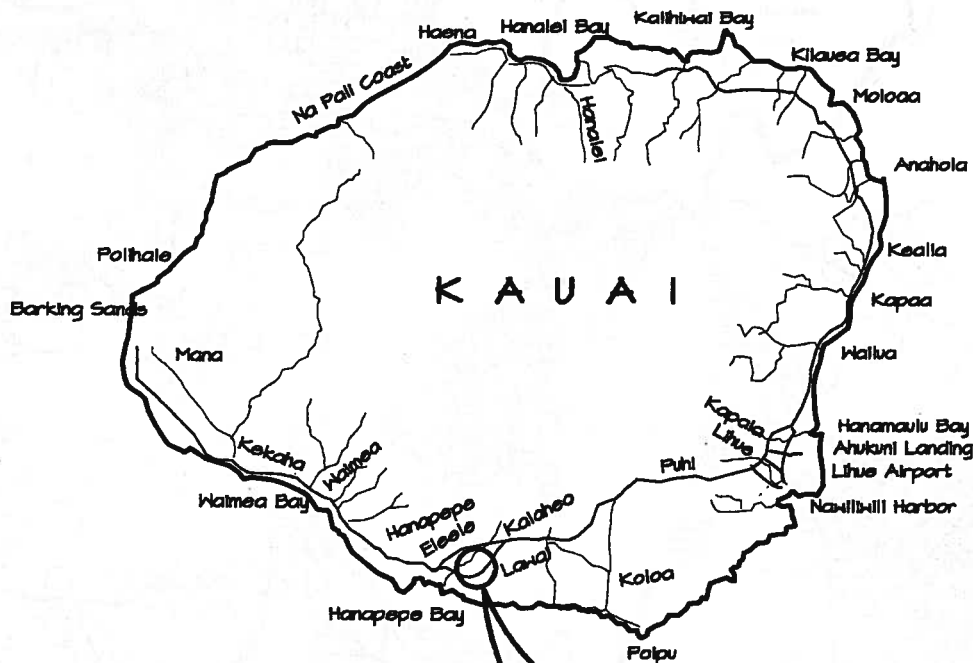
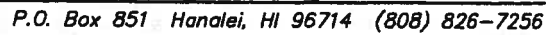
Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

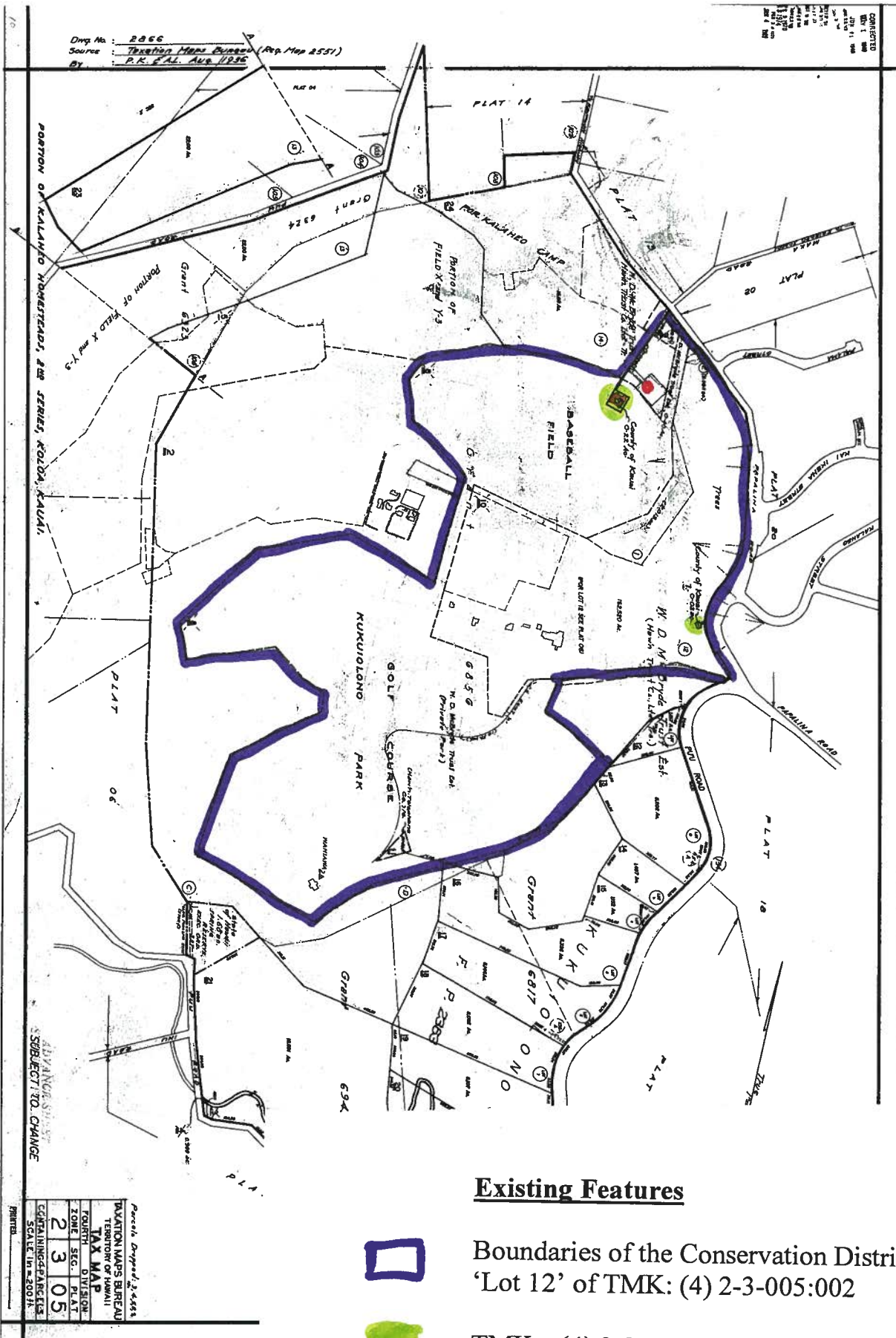


Laura H. Thielen, Chairperson
Department of Land and Natural Resources



PROJECT VICINITY

**COUNTY OF KAUAI, BOARD OF WATER SUPPLY
CONSOLIDATION AND RESUBDIVISION OF WATER TANK PARCELS
T.M.K. (4) 2-3-05:06 (PORTION), (4) 2-3-05:07 and LOT 12
KUKUIOLONO SUBDIVISION, KALAHEO, KAUAI, HAWAII**



Existing Features



Boundaries of the Conservation District of 'Lot 12' of TMK: (4) 2-3-005:002



TMKs: (4) 2-3-005: 006 & 007



Tank Sites

EXHIBIT 2



**Lot 12 – Existing 1968 Tank
Portion Proposed “Lot B”**



**Lot 12 – Existing 1968 Tank
Portion Proposed “Lot B”**



**Lot 12 – Existing 1968 Tank
Portion Proposed “Lot B”**



**Existing 1940 Water Tank
TMK (4) 2-3-05:06**



**Existing 1940 Water Tank
TMK (4) 2-3-05:06**



**Photo Showing Both 1968 &
1940 Water Tanks**



**Existing 1940 Water Tank
TMK (4) 2-3-05:06**



**Lot 12 – Existing 1968 Tank
Vegetative Screening
As Viewed from Park**



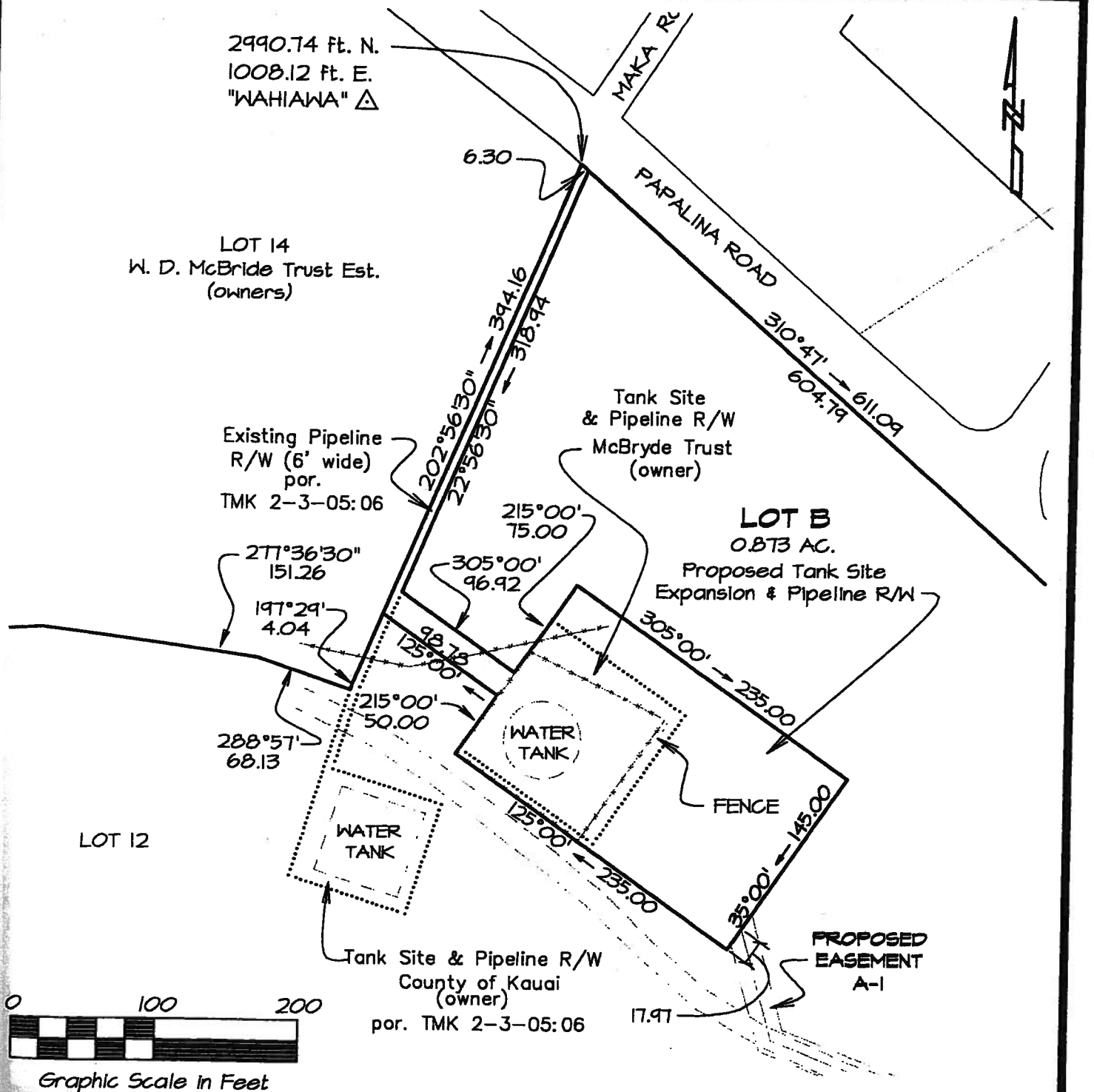
**Undeveloped Remnant Parcel
TMK (4) 2-3-05:07**

**COUNTY OF KAUAI, BOARD OF WATER SUPPLY
CONSOLIDATION AND RESUBDIVISION OF WATER TANK PARCELS
TMK (4) 2-3-05: 06 (Portion), (4) 2-3-05:07 and Lot 12
KUKUIOLONO SUBDIVISION, KALAHEO, KAUAI, HAWAII**



Wagner Engineering Services, Inc.

P.O. Box 851 Hanalei, HI 96714 (808) 826-7256



MAP INSET A

COUNTY OF KAUAI, BOARD OF WATER SUPPLY
CONSOLIDATION AND RESUBDIVISION OF WATER TANK PARCELS
T.M.K. (4) 2-3-05:06 (PORTION), (4) 2-3-05:07 and LOT 12
KUKUIOLONO SUBDIVISION, KALAHEO, KAUAI, HAWAII

RECEIVED
MAY 29 2007

COUNTY COUNCIL
COUNTY OF KAUAI

Resolution

No. 2007-76

**RESOLUTION ABANDONING THE 1940 TANK SITE AND
REMNANT PARCEL, KALĀHEO, KAUAI, AND AUTHORIZING
THE EXCHANGE WITH THE 1968 TANK SITE, KALĀHEO, KAUAI**

WHEREAS, the Walter D. McBryde Trust has requested a land exchange for the County's 1940 Tank Site containing a 200,000 rectangular tank built by the County and located on TMK (4) 2-3-5-006 (approximately 0.58 acres) and the remnant parcel located on TMK (4) 2-3-5-007 (approximately 871 square feet) with the 1968 Tank Site containing a 250,000 round tank built by the County and located on TMK: (4) 2-3-005-002 and additional lands for a future tank site (approximately 34,000 square feet); and

WHEREAS, the 1940 Tank Site was conveyed to the County of Kauai; and

WHEREAS, the 1968 Tank was built by the County of Kauai Department of Water; and

WHEREAS, both water tanks service the Kalāheo district; and

WHEREAS, on June 27, 2005, the Board of Water Supply entered into a license agreement with Bank of Hawaii, Trustee to the Walter D. McBryde Trust which granted the County a license to use the 1968 Tank Site until January 1, 2007 with a month-to-month extension to January 1, 2008; and

WHEREAS, the use of the 1940 Tank Site will be discontinued when the replacement tank, that is currently under construction on land that has been conveyed via executive order to the County by the State of Hawaii Department of Land and Natural Resources, is completed and placed into active service; and

WHEREAS, the term of the license agreement was based on the completion of the new replacement tank and the decommissioning of the 1940 Water Tank; and

WHEREAS, the estimated completion date for the replacement tank is September, 2007; and

WHEREAS, pursuant to Kauai County Charter Section 10.04k, the Director of Finance is authorized to dispose of any real property as the interest of the County may so require; and

WHEREAS, pursuant to Hawaii Revised Statutes Section 54-27, the County of Kauai Board of Water Supply is authorized to acquire property that it determines necessary for the operation of the waterworks system; and

EXHIBIT 5

WHEREAS, the County Engineer in his letter dated May 1, 2007 recommends the abandonment of the 1940 Tank Site and remnant parcel in exchange for the 1968 Tank site and future tank site which is to be conveyed to the County of Kaua'i Board of Water Supply when the new replacement tank is completed and placed into active service; and

WHEREAS, the Director of Finance also agrees with the abandonment of the said tank site and remnant parcel in exchange for the 1968 Tank Site and future tank site at the time that the new replacement tank is completed and placed into active service, and has so indicated in the County Engineer's May 1, 2007 letter; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that the County's 1940 Tank Site and remnant parcel identified as TMK (4) 2-3-5-006 and (4) 2-3-5-007, respectively, be abandoned and exchanged with a portion of TMK (4) 2-3-005-002, approximately 34,000 square feet which contains the 1968 Tank and additional lands for a future tank site when the new replacement tank is completed and placed into active service.

BE IT FURTHER RESOLVED, that the Director of Finance shall assist the Board of Water Supply with the exchange of the 1940 Tank Site and remnant parcel with the 1968 Tank Site and future tank site owned by the Walter D. McBryde Trust.

BE IT FURTHER RESOLVED, that the Director of Finance, Acting Water Manager and Chief Engineer, and County Attorney's Office initiate the process of a land exchange.

BE IT FURTHER RESOLVED, that copies of this Resolution be transmitted to the Board of Water Supply, Director of Finance, County Attorney, County Engineer, Mayor, and the Walter D. McBryde Trust.

INTRODUCED BY:



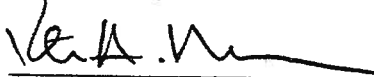
MEL RAPOZO
(By Request)

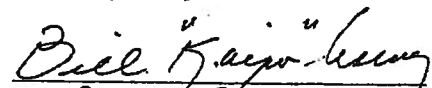
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	Agree	Oppose	Exc	Recessed
Osing	X			
Bynum			X	
Furfaro	X			
Isori-Carralho	X			
Kouchi			X	
Rapozo	X			
Yukimura	X			
Total	5	0	2	0

Certificate Of Adoption

We hereby certify that Resolution No. 2007-76 was adopted by the Council of the County of Kaua'i, State of Hawaii, Lihue, Kaua'i, Kaua'i, on May 24, 2007.


County Clerk
Dated 5/24/2007


Chairman/Presiding Officer